

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMAUNITED STATES OF AMERICA and
the ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT,

Plaintiffs,

v.

BROWN WOOD PRESERVING COMPANY,
INC. and the JAMES GRAHAM BROWN
FOUNDATION, INC.

Defendants.

Civil Action No.

COMPLAINT

The United States of America, by the authority of the Attorney General and, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), and the Alabama Department of Environmental Management ("ADEM"), by and through undersigned counsel, file this complaint and allege as follows:

NATURE OF THE ACTION

1. This is a civil action for injunctive relief and the assessment of civil penalties pursuant to Section 3008(a) and (g) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6928(a) and (g), for violations of Sections 3004 and 3005 of RCRA, 42 U.S.C. §§ 6924 and 6925, and the implementing regulations set forth at Title 40 of the Code of Federal Regulations (C.F.R.), Parts 260-282, and the Alabama Hazardous Wastes Management and Minimization Act (AHWMMA), ALA. CODE § 22-30-1 (1975) *et seq.*, and the implementing regulations.

JURISDICTION, VENUE, AUTHORITY, AND NOTICE

2. The United States District Court for the Northern District of Alabama has jurisdiction over this action pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 28 U.S.C. §§ 1331, 1345 and 1355.

3. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 28 U.S.C. § 1391(b), venue is proper in this Court because the violations occurred in this judicial district.

4. The State of Alabama was authorized to administer its RCRA hazardous waste management program on or about December 22, 1987. The United States has concurrent authority under Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), to enforce those portions of the RCRA hazardous waste management program that ADEM is also authorized to enforce.

5. Authority to bring this civil action is vested in the Attorney General of the United States and the Administrator of EPA pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928(a), and 28 U.S.C. §§ 516 and 519.

6. Authority to bring this action is vested in the Alabama Attorney General, on behalf of ADEM, pursuant to ALA. CODE § 22-22A-5.

7. Notice of the commencement of this action has been provided to the State of Alabama in accordance with 42 U.S.C. § 6928(a)(2).

DEFENDANTS

8. Brown Wood Preserving Company, Inc. ("Brown Wood") is a corporation organized and existing under the laws of the State of Kentucky and licensed to do business in the State of Alabama.

9. The James Graham Brown Foundation, Inc. ("JGBF") is a corporation organized and existing under the laws of the State of Kentucky and formerly doing business in the State of Alabama.

10. Brown Wood and JGBF are "persons" as that term is defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), ALA. CODE § 22-30-3(9).

11. Brown Wood owns and operates a wood treatment facility ("Brown Wood Facility" or "Facility") located at 16591 Brownville Road, Tuscaloosa County, Northport, Alabama, which generates, treats, stores, and disposes of hazardous waste, and is therefore an "owner" and "operator" of the Facility as those terms are defined at 40 C.F.R. § 260.10 and ADEM Admin. Code R. 335-14-1-.02.

12. From approximately 1969 through 1980, JGBF owned and operated the Facility, and was therefore an "owner" and "operator" of the Facility as those terms are defined at 40 C.F.R. § 260.10 and ADEM Admin. Code R. 335-14-1-.02, during those years.

GENERAL ALLEGATIONS

13. The Facility is located approximately 18 miles northwest of Northport, Alabama, and encompasses approximately 125 acres, portions of which are within the 25-year floodplain of the Sipsey River.

14. Throughout its history, the primary activity at the Facility has been the treatment of utility poles and lumber with creosote preservatives and, beginning in 1994 with pentachlorophenol (PCP), and in approximately 2000 with chromated copper arsenate (CCA), using a steam pressure process. CCA is a chemical mixture consisting of three pesticidal

compounds (chromium, copper, and arsenic). PCP is the primary preservative currently used at the Facility.

15. Solid and hazardous wastes are, and have been, generated at the Facility during its operation, including but not limited to process wastewater containing preservative residuals such as arsenic, chromium, copper, PCP and creosote (classified as F032, F034 and/or F035 listed hazardous waste pursuant to 40 C.F.R. § 261.31 and ADEM Admin. Code R. 335-14-2-.03(2)); solid waste that exhibits the characteristics of toxicity (classified as D004 (arsenic), D007 (chromium), and D037 (pentachlorophenol), pursuant to 40 C.F.R. § 261.34 and ADEM Admin. Code R-335-14-.04); bottom sediment sludge from the treatment of process wastewater (classified as K001 listed hazardous waste pursuant to 40 C.F.R. § 261.32 and ADEM Admin. Code R. 335-14-2-.04(3)); discarded commercial chemical products; off-specification commercial chemical products; container residues; and/or spill residues, including creosote (U051 listed hazardous waste) and PCP (F027 listed hazardous waste), pursuant to 40 C.F.R. § 261.33 and ADEM Admin. Code R. 335-14-2-.04(4)), and other treatment solution wastes.

16. Since at least 1969, some or all of the hazardous wastes identified in Paragraph 15 have been released into the environment through spills or leaks at numerous locations around the Facility, including, but not limited to, wood treatment process areas and a tank farm consisting of tanks and tank systems, as those terms are defined in 40 C.F.R. § 260.10 and A.A.C. R. 335-14-1-.02.

17. At least since 1999, Brown Wood has generated, and continues to generate, more than 1,000 kilograms (kg) of hazardous waste per calendar month, or more than one kilogram (kg) of acutely hazardous waste listed in 40 C.F.R. § 261.33(e) per calendar month, at the

Facility, including but not limited to the hazardous wastes identified in Paragraph 15 of this Complaint.

18. Since at least the early 1980s, the Facility has undergone numerous RCRA inspections by ADEM and EPA personnel documenting multiple RCRA violations forming the basis for the allegations set forth in this Complaint, including, but not limited to, unpermitted disposal of hazardous waste and failure to perform required closure activities. The inspections also documented evidence of the disposal of hazardous waste at the Facility prior to 1980.

19. Brown Wood has entered into an agreement with JGBF under which ownership of the Facility will be returned to JGBF prior to December 31, 2008.

FIRST CLAIM FOR RELIEF

Operation of Hazardous Waste Disposal Facility Without Permit or Interim Status

20. Paragraphs 1 through 19 are realleged herein and incorporated herein by reference.

21. Since approximately 1980 through the present, Brown Wood disposed of, and continues to dispose of, hazardous waste, within the meaning of 42 U.S.C. §§ 6903, 6921, ALA. CODE §§ 22-30-3, 22-30-10, and their implementing regulations, 40 C.F.R. §§ 260.10, 261.3 and ADEM Admin. Code R. 335-14-1-.02 and 335-14-2-.01(3) and precursors, at the Facility, including but not limited to F032 and F034 listed hazardous waste and other hazardous wastes referenced in Paragraph 15 of this Complaint.

22. Prior to 1980, JGBF disposed of hazardous waste, within the meaning of 42 U.S.C. §§ 6903, at the Facility, including but not limited to hazardous wastes referenced in Paragraph 15 of this Complaint.

23. Since approximately 1980 through the present, Brown Wood operated a facility that was used for the disposal of hazardous waste without obtaining a permit, as required by 42 U.S.C. § 6925(a), 40 C.F.R. Part 270, ALA. CODE § 22-30-12(b), and ADEM Admin. Code Chapter 335-14-8, and did not qualify for interim status pursuant to 42 U.S.C. § 6925(e), 40 C.F.R. Part 270, Subpart G, ALA. CODE § 22-30-12(i) and ADEM Admin. Code 335-14-8-.07, and was not otherwise exempt from such permit requirements under any provision of law.

24. Each day that Brown Wood operated the Facility without a permit authorizing the disposal of hazardous waste at the Facility or qualifying for interim status constitutes a separate violation of 42 U.S.C. § 6925(a) and/or ALA. CODE § 22-30-12, and their implementing regulations, 40 C.F.R. Part 270 and ADEM Admin. Code Chapter 335-14-8 and precursors.

25. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g); the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890 (1990), *amended by* Pub. L. No. 104-134, § 31001(s)(1), 110 Stat. 1321-373 (1996) (28 U.S.C. § 2461 note); and 61 Fed. Reg. 69,360 (Dec. 31, 1996), Brown Wood is liable for a civil penalty of up to \$25,000 per day for each violation of 42 U.S.C. § 6925(a), 40 C.F.R. Part 270, ALA. CODE § 22-30-12, and ADEM Admin. Code Chapter 335-14-8 occurring prior to January 31, 1997; a civil penalty of up to \$27,500 per day for each violation of 42 U.S.C. § 6925(a), 40 C.F.R. Part 270, ALA. CODE § 22-30-12, and ADEM Admin. Code Chapter 335-14-8 occurring on or after January 31, 1997, and before March 16, 2004, and a civil penalty of up to \$32,500 per day for each violation of 42 U.S.C. § 6925(a), 40 C.F.R. Part 270, ALA. CODE § 22-30-12, and ADEM Admin. Code Chapter 335-14-8 occurring on or after March 16, 2004.

26. Plaintiffs are informed and believe that unless enjoined by this Court pursuant to the provisions of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Brown Wood will continue to violate the requirements and provisions of 42 U.S.C. § 6925(a), 40 C.F.R. Part 270, ALA. CODE § 22-30-12, and ADEM Admin. Code Chapter 335-14-8 in the manner alleged herein.

27. Plaintiffs are informed and believe that unless enjoined by this Court pursuant to the provisions of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), JGBF will be in violation of the hazardous waste disposal requirements of Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and ADEM Admin. Code R. 335-14-5, 335-14-6 and ALA. CODE § 22-30-12, when it becomes the owner and operator of the Facility prior to December 31, 2008.

SECOND CLAIM FOR RELIEF

Failure to Properly Respond to Tank System Leaks and to Close Tank System

28. Paragraphs 1 through 27 are realleged herein and incorporated herein by reference.

29. On numerous occasions since at least 1998 through the present, Brown Wood has failed to properly respond to leaks or spills from the hazardous waste tank systems and secondary containment systems located in the tank farm referenced in Paragraph 16 of this Complaint in accordance with 40 C.F.R. §§ 264.196, 265.196, and A.A.C. R. 335-14-6-.10(7), by failing to immediately remove the tank systems and secondary containment systems from service upon discovery of a leak or spill; failing to prevent the flow or addition of wastes into the tank systems and secondary containment systems until the cause of the leak or spill could be identified and corrected; failing to remove wastes from the tank systems and secondary containment systems until the leak or spill is corrected; failing to prevent further migration of the leaked or spilled wastes from the tanks and tank farms into the environment; failing to close the tank systems; and

otherwise failing to comply with the requirements of 40 C.F.R. §§ 264.196, 265.196, and A.A.C. R. 335-14-6-.10(7).

30. Each day that Brown Wood has failed to properly respond to leaks or spills from the tank systems and secondary containment systems at the Facility as alleged in Paragraph 29 of this Complaint constitutes a separate violation of 40 C.F.R. §§ 264.196, 265.196, and A.A.C. R. 335-14-6-.10(7).

31. Pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g); the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890 (1990), *amended by* Pub. L. No. 104-134, § 31001(s)(1), 110 Stat. 1321-373 (1996) (28 U.S.C. § 2461 note); and 61 Fed. Reg. 69,360 (Dec. 31, 1996), Brown Wood is liable for a civil penalty of up to \$25,000 per day for each violation of 40 C.F.R. §§ 264.196, 265.196, and A.A.C. R. 335-14-6-.10(7) occurring prior to January 31, 1997; a civil penalty of up to \$27,500 per day for each violation of 40 C.F.R. §§ 264.196, 265.196, and A.A.C. R. 335-14-6-.10(7) occurring on or after January 31, 1997, and before March 16, 2004, and a civil penalty of up to \$32,500 per day for each violation of 40 C.F.R. §§ 264.196, 265.196, and A.A.C. R. 335-14-6-.10(7) occurring on or after March 16, 2004.

32. Plaintiffs are informed and believe that, unless enjoined by this Court pursuant to the provisions of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Brown Wood will continue to violate the requirements and provisions of 40 C.F.R. §§ 264.196, 265.196, and A.A.C. R. 335-14-6-.10(7) in the manner alleged herein.

33. Plaintiffs are informed and believe that unless enjoined by this Court pursuant to the provisions of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), JGBF will be in violation of the

requirements and provisions of 40 C.F.R. §§ 264.196, 265.196, and A.A.C. R. 335-14-6-.10(7), requiring closure of the tank systems referenced in Paragraph 16 of this Complaint, when it becomes the owner and operator of the Facility prior to December 31, 2008.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs United States of America and State of Alabama respectfully pray that this Court provide the following relief:

- A. A declaratory judgment finding that the Brown Wood Facility is a hazardous waste disposal facility subject to regulation under RCRA and its implementing regulations;
- B. A permanent injunction directing defendants Brown Wood and JGBF to:
 - 1. Dispose of hazardous waste in compliance with Section 3005(a) of RCRA, 42 U.S.C. § 6925(a) and ADEM Admin. Code R. 335-14-5, 335-14-6 and ALA. CODE § 22-30-12; and
 - 2. Close the tank systems referenced in Paragraph 16 of this Complaint and conduct corrective action activities for all Solid Waste Management Units (SWMUs) and Areas of Concern (AOCs), as those terms are defined by the Hazardous and Solid Waste Amendments of 1984, Pub. L. No. 98-616, 98 Stat. 3221 (1984), (HSWA), and identified by ADEM and EPA in the RCRA Section 3013 Workplan;
- C. A judgment in favor of Plaintiff United States of America assessing civil penalties against defendant Brown Wood in an amount not to exceed \$25,000 per day for each violation of RCRA occurring prior to January 31, 1997, \$27,500 per day for each

violation of RCRA occurring on or after January 31, 1997, and before March 15, 2004,
and \$32,500 per day for each violation of RCRA occurring after March 15, 2004;

D. A judgment in favor of Plaintiff ADEM assessing civil penalties against
defendant Brown Wood for each day of violation of the AHWMMMA as appropriate
pursuant to ALA. CODE § 22-22A-5(18).

E. A judgment awarding the Plaintiffs the costs of this action; and

F. Such further relief as this Court may deem appropriate.

Respectfully submitted,

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